

BEFORE THE PUBLIC DISCLOSURE COMMISSION  
OF THE STATE OF WASHINGTON

IN RE COMPLIANCE	)	PDC CASE NO: #98-405
WITH RCW 42.17	)	
	)	REPORT OF INVESTIGATION
Bob R. Holman, Mayor, City	)	
Of Monroe	)	
BILL Verwolf, Administrator,	)	
City of Monroe	)	
_____	)	

I.

BACKGROUND

- 1.1 On March 20, 1998, the Public Disclosure Commission (PDC) received a complaint from Meredith Mechling alleging violations of RCW 42.17.130 on the part of the City of Monroe. The complainant alleged that the City of Monroe spent public funds and used public facilities to urge citizens not to sign a petition for a referendum to overturn Monroe City Ordinance #1130. See Exhibit # 1.
- 1.2 The City of Monroe adopted Ordinance #1130 on March 11, 1998. This ordinance established procedures for requesting the extension of the city sewer system to areas outside the city limits, but within the Urban Growth Area as outlined in the Growth Development Plan and the city's Comprehensive Plan. See Exhibit #2.

II.

SCOPE

- 2.1 The following documents, submitted by the complainant Ms. Meredith Mechling, were reviewed:
  - a. The letter of complaint, dated March 20, 1998, from Meredith Mechling to the PDC.

- b. A copy of a letter entitled "An Important Message to the Citizens of Monroe from Mayor Bob R. Holman and Councilmember Ken Berger."
- c. A copy of a newspaper advertisement entitled "An Important Message to the Citizens of Monroe from Mayor Bob R. Holman and the Monroe City Council," from the March 25, 1998 edition of the *Monroe Monitor*.

2.2 The following documents, submitted on behalf of the respondent by Mr. Bill Verwolf, City Administrator, City of Monroe, were reviewed:

- a. The letter of response to a PDC request for information from Bill Verwolf, City Administrator, City of Monroe, dated April 1, 1998.
- b. A copy of City of Monroe Ordinance #1118, adding Chapter 1.12 to the Monroe Municipal Code.
- c. Copies of RCW 35A.11.080, .090, and .100, RCW 35.21.005, and RCW 35.17.240, .250, .260, .270, .280, .290, .300, .310, .330, and .340.
- d. A copy of the advertisement placed in the March 25, 1998 edition of the *Monroe Monitor* by the City of Monroe.
- e. A copy of a letter in response to information requested by the PDC, dated August 10, 1998, from Bill Verwolf, City Administrator, City of Monroe.
- f. A copy of the minutes of the May 13, 1998 meeting of the Monroe City Council.

2.3 On Friday, January 22, 1999, after making an appointment, PDC staff traveled to Monroe to interview City Officials regarding this investigation. Upon arrival, PDC staff learned that Monroe City Officials declined to be interviewed under oath because they had been named in a civil lawsuit related to this complaint. Those interviews were re-scheduled on June 30, 1999, and included the following officials of the City of Monroe:

- a. Bob R. Holman, Mayor.
- b. William Verwolf, City Administrator
- c. Perry Asher, Director, City Department of Administration

III.

APPLICABLE LAW,  
ADMINISTRATIVE CODE, &  
DECLARATORY ORDERS

3.1 **RCW 42.17.020(3)** states the following:

**““Ballot proposition” means any “measure” as defined by RCW 29.01.110, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency prior to its circulation for signatures.”**

3.2 **RCW 42.17.130** states the following:

**“No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency: PROVIDED, That the foregoing provisions of this section shall not apply to the following activities:**

**(1) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;**

**(2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;**

**(3) Activities which are part of the normal and regular conduct of the office or agency.”**

**3.3 WAC 390-05-273 states the following:**

**“Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17.130, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate’s campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.”**

**3.4 Declaratory Ruling No. 3**

This ruling addresses the issue of a “group seeking incorporation of a city”, and provides guidance as to when the group should file with the Public Disclosure Commission as a political committee supporting a ballot proposition. See Exhibit #3. The ruling states in part as follows:

**“a group of citizens which has publicly circulated petitions to a boundary review board seeking to incorporate a second-class city and has solicited contributions from the general public is a political committee and therefore must file reports of contributions and expenditures from the time of its first contribution or expenditure.”**

**“We believe that when the general public has been solicited by an organization to contribute to its effort to influence an election, the Act imposes a duty upon that organization to disclose the sources of its financial support because it then has the “expectation” required under RCW 42.17.020(24) and becomes a political committee.”**

**“The Act does not provide a “grace period” during which groups may secretly solicit for political purposes. We believe that the earliest financial support given a group is often the most important. The sources of such early “seed money” will provide the foundation for future fund raising efforts.”**

### 3.5 Declaratory Ruling No. 6

This ruling addresses the issue of a recall petition becoming a ballot proposition when it is initially filed. See Exhibit #4. The ruling states in part:

**“A recall action becomes a “ballot proposition” under RCW 42.17.020(2) (NOTE-now RCW 42.17.020(3)) “from and after the time when the proposition has been initially filed with the appropriate election officer.”**

### 3.6 Declaratory Ruling No. 14

This ruling provides an analysis of when and to what extent RCW 42.17.130 and RCW 42.17.190 affect a school district’s ability to engage in activities relating to the support of or opposition to initiatives to the legislature. See Exhibit #5. The ruling states in part:

**“Although chapter 42.17 RCW does not specify when a measure becomes an initiative to the legislature, recognizing the intent of this provision, the Commission finds that RCW 42.17.190 should be interpreted consistently with the definition in RCW 42.17.020(3) so as to be effective in preventing governmental interference in a matter concerning the people of the state and their elected representatives. That statute provides that initiative measures are “ballot propositions from the time they are first submitted to the Secretary of State prior to their circulation for signatures. See Washington State Constitution, Amendment 72.”**

**“To conclude that a measure first becomes an initiative to the legislature after the signatures have been collected and it has been certified by the Secretary of State, would likely permit public resources to be used to promote or oppose the critical signature gathering phase of the process, including having public employees actually collect voter signatures on an initiative petition during working hours. Since such a conclusion would be contrary to the best interests of the public and have the effect of limiting the reach of a statute without any indication that the limitations are warranted or were intended, it is insupportable.”**

**“Therefore, in the Commission’s opinion, the prohibition in**

**RCW 42.17.190(4) applies during the signature gathering phase as well as the time during which the initiative is pending before the legislature.”**

IV.

**FINDINGS**

- 4.1 On November 19, 1997, the City of Monroe adopted Ordinance #1118, which established the powers of the initiative and referendum process for qualified electors of the city. See Exhibit #6. The effective date of the ordinance was December 1, 1997.
- 4.2 The Municipal Research and Services Center of Washington, issued Report No. 28 in February of 1994, entitled the “Initiative and Referendum Powers of Cities in the State of Washington”. The report provided an overview of the initiative and referendum process as exercised in cities and towns in the State of Washington. In addition, the report further stated that ordinances may be enacted by initiative or ordinances may be repealed by referendum. See Exhibit #13.
- 4.3 On March 11, 1998, the City of Monroe adopted Ordinance #1130. The ordinance established the procedures for requesting the extension of city sewer lines into the Urban Growth Area, and to refer such requests to the Boundary Review Board, in accordance with the previously adopted Comprehensive Plan.
- 4.4 On March 16, 1998, at the request of the signature gatherers, an employee in the Monroe City Clerk’s Office issued referendum number 98-1130, so that citizens could begin organizing an effort to circulate petitions to gather signatures for a referendum overturning City Ordinance #1130.
- 4.5 The petitions were printed on March 17, 1998, and the petitioners provided the Monroe City Attorney with a copy of the petition. The petition along with additional information distributed by the signature gatherers is included in this report. See Exhibit #7. Perry Asher, Director of Administrative Services for the City of Monroe, was asked if he was aware that a petition was being circulated for a referendum on ordinance number 1130. Mr. Asher responded:

**“...what I knew was that petition form had been prepared and submitted to the risk manager for her and the City Attorney to review. I knew that they had put it on the fast track, got it reviewed, made some suggestions and called and let them know that it was available for them to pick up. I also know they never picked it up and I heard just around that there was a petition being circulated, but I didn’t hear that until late Wednesday afternoon.”** (Perry Asher Interview Under Oath, page 5-See Exhibit #14)

- 4.6 On March 18, 1998, the Monroe City Council met in a work session. They adjourned into executive session, and either during or after the executive session, Mayor Bob Holman directed that a letter be sent to residents of the city concerning the petition effort for referendum #98-1130. Bill Verwolf has been the City Administrator of Monroe since May of 1997, and is responsible to the Mayor and City Council for the operation of city functions. With regard to that work session, Mr. Verwolf stated the following in his August 10, 1998, letter to the Commission (See Exhibit #8, page 2):

**“An additional concern raised by Ms. Mechling deals with an executive session held near the conclusion of the study session of March 18, 1998. At workshops and study sessions the city clerk is normally not present. The tape recording of those sessions is normally handled by Perry Asher (Monroe Director of Administrative Services) or the city attorney.”**

**“It is our belief that upon adjourning from the executive session we may have failed to turn on the recorder since the council at this point is normally gathering their papers and preparing to adjourn. It is my best recollection that after coming out of executive session the mayor had designated Perry Asher to draft the letter to be added to the ad in the Monitor’s monthly half page article after some general brief conversation with the council affirming that was their desire. I believe this was done based upon a consensus with no formal vote being taken but was an action after we came back into regular session.”**

**“I am unaware if any members of the public were in attendance during that study session but believe that no members were remaining when we came out of executive session. Admittedly, closing the meeting in this fashion was**

**sloppy in that we did not close the meeting in more formal fashion and record all conversations.”**

4.7 Perry Asher drafted the letter at the direction of Mayor Holman, had City Risk Manager, Nancy Abel, the City Attorney, Don Lyderson, and Bill Verwolf review the letter and make any changes they thought should be made. Mr. Asher is in charge of the city’s Public Education Program that includes writing press releases, producing the city’s newsletter, answering queries from the public, and talking to the press.

4.8 On March 19, 1998, the City of Monroe distributed a letter entitled “An Important Message to the Citizens of Monroe from Mayor Bob R. Holman and Councilmember Ken Berger”. See Exhibit #9. The first section of the letter is entitled “**The Issue**”, and discusses the conditions under which the city may wish to permit extension of sanitary sewer to properties outside the current City limits. The city (under limited circumstances) may offer sewer services to properties outside the city limits but within the Urban Growth Area (UGA), rather than annexing those properties into the city. At the end of “The Issue” section, the letter states the following:

**“As many of you may already know, a petition is now being circulated to subject this ordinance to the referendum process. It is our desire to make sure that the voters of Monroe are fully informed as to the facts of this issue before signing a petition. This petition drive has been initiated by a group calling itself the “Monroe Citizens for Responsible Growth”. The leaders of this group and most of its members are not residents of the City of Monroe.”**

4.9 The next section of the letter is entitled “**City Accomplishments**”, and states “the City of Monroe has many reasons to take pride in the Monroe community”. This section of the letter goes on to state “we have maintained the highest quality of life possible while allowing for the individual property rights that we all cherish. In every single area for which we bare (sic) responsibility, the City has kept well ahead of the unexpected changes.” The letter then lists the following five bulleted items that highlight certain accomplishments by the City of Monroe. Those accomplishments were as follows:

- police department has more officers per capita than most in Snohomish County and one of the finest law enforcement agencies in the state,



- has the largest number of acres per capita for parks and open spaces of any city in Snohomish County, and parks are better maintained with smaller staff;
- sewer and water rates are lower in the city of Monroe, when compared to other similar sized communities in the county, and that new customer hook-up fees are providing more revenue than needed for capital improvements;
- the excellent condition of the streets when compared to other communities similar in size;
- city has maintained relatively low tax rates, chosen not to impose taxes that were permitted, and tout the findings of a financial audit.

4.10 Finally, the letter concludes with the “Our Position” section which states the following:

**“The Mayor and the City Council believe that the referendum drive to overturn this carefully crafted sewer extension ordinance has the potential of undermining these many accomplishments. Like the process of accomplishing the positive results listed above, this ordinance will give the City the ability to control densities and development standards and will help to control sewer rates to everyone in the City. The higher rates paid those outside the City limits mean that the City can charge less of those that live inside the City limits.”**

**“If you truly believe it is a bad law or that it will cause more problems than it will solve, there are better ways of expressing your views than signing this petition. This petition drive will only allow outside interests to further their own narrow agenda at the cost of our ability, as your representatives, to make the kind of decisions that have created a high quality community.”**

**“In the final analysis, this is an issue of trust. Do you trust the future of our community to individuals that live outside the City limits or to your duly elected Mayor and City Council? You elected us to make the critical decisions affecting the lives of Monroe citizens. We believe that we are better able to do this than those that live outside our City. We hope you agree.”**

- 4.11 The letter was mailed to all addresses in the city of Monroe using the city's normal mailing list. The letter was sent to 3,912 residents at a cost of \$1,180.61, and was a separate mailing that was not included with any other City of Monroe communication or utility statements. The City also made the letter available at City Hall and other city facilities as a handout to the public.
- 4.12 Prior to this letter being mailed out, the City of Monroe had distributed on a normal and regular basis, information to residents by enclosing a city newsletter or flyer with the monthly water and sewer bill. During the interview under oath, Mayor Holman stated that during his term as Mayor, the City of Monroe has used newsletters, mailings enclosed with utility bills, and a government access channel on the local television cable system to disseminate information about the City of Monroe.
- 4.13 Mayor Bob R. Holman stated the letter was not a regularly scheduled communication to residents, and that he directed staff to compile the letter following the March 18, 1998, city council work session. The mayor reviewed the letter along with Monroe City Councilmember Ken Berger, and it was determined those two names would appear at the bottom of the communication. Councilman Berger was the only council member that staff could contact for final approval prior to printing the letter. Mayor Holman stated the following about the letter:

**“What I felt needed to be clarified was the fact that what was being told, according to input that people had told me, were statements this sewer ordinance was going to cost the tax payers of Monroe large amounts of money. That there was going to be a large number of houses built if this was implemented and just general things of that nature that I felt were totally untrue.”** (Bob Holman Interview Under Oath, page 5-See Exhibit #14)

**“Well the issuance of this letter came from people asking me questions just prior to the council meeting on that date, that they were stating these people were going door to door and telling them all these things and I and other members of the council felt that proper information should be out there.”** (Bob Holman Interview Under Oath, pages 6-7-See Exhibit #14)

**“I just felt that it was necessary to have the true and accurate information out there. I had no idea if it was going to become a ballot issue or not. There was nothing to indicate to me that is was.”** (Bob Holman Interview Under Oath, page 7-See Exhibit #14)

**“All they have to do is come to the council meetings. I can’t tell you that I thought this was going to do really anything other than cloud the issues for the citizenry of Monroe.”** (Bob Holman Interview Under Oath, page 8-See Exhibit #14)

**“I don’t want any citizen signing something based on accusations and information that is not true and correct. That’s where I was coming from, how it was worded, I didn’t do the exact wording, although I did approve it. It expressed the intent that I felt.”** (Bob Holman Interview Under Oath, page 9-See Exhibit #14)

- 4.14 The City of Monroe had an agreement with the Monroe Printing Company to run a half page advertisement each month in a publication entitled the *Monroe Monitor*. The city used these monthly advertisements as another way to inform the public about various issues and upcoming events.
- 4.15 On Friday, March 20, 1998, the City of Monroe placed an advertisement with the *Monroe Monitor*, at a cost of \$327.60, for publication on Wednesday, March 25, 1998. See Exhibit #10. The advertisement included the same letter sent to the citizens of Monroe entitled “An Important Message to the Citizens of Monroe from mayor Bob R. Holman and the Monroe City Council”, and some additional information regarding the Monroe Spring Clean-up Project beginning April 6, 1998.
- 4.16 In addition, the letter also contained the brief statement “Mayor Bob Holman and the Monroe City Council mailed a letter to every household in the City last week on the City’s sewer extension ordinance”. Monroe City Administrator, Bill Verwolf, stated in his response to the PDC dated April 1, 1998, with regards to the advertisement in the *Monroe Monitor* (See Exhibit #11, page 1):

**“We consider this letter and ad to be consistent with our ongoing commitment to provide information to the citizens of Monroe. We regularly send newsletters out with information about current projects and discussions, and the ad was our regularly scheduled ad for the month. If there is a change from “normal”, it was the recognition by the Mayor and Council that in this petition drive, information was being presented that was clearly in error. The timing of the newsletter was therefore accelerated to provide an alternative discussion of the ordinance, and it’s impact.”**

**“First, the Mayor and the Council did not consider the issue to be a ballot measure. Even if the petition efforts are successful, the Council has several options for responding, only one of them being to hold an election. The other impacting factor in this case, was the potentially misleading information being presented to the people being asked to sign the petition, beyond what you would normally expect in a drive such as this.” ...The goal as stated in the letter and ad was “It is our desire to make sure the voters of Monroe are fully informed as to the facts of this issue before signing a petition.” The letter and ad was in no way intended to prevent an individual from considering, and if they chose, signing a petition properly presented to them for their signature.”**

- 4.17 Perry Asher said that the advertisement in the *Monroe Monitor* was previously contracted for and that the petition issue was important enough to be included. The deadline for publication was Friday, March 20<sup>th</sup> and he received the approval of Bill Verwolf to include the letter as an article in the advertisement. The advertisement included additional members of the city council who had expressed their approval of the letter as well.
- 4.18 On Thursday, April 16, 1998, the office of the Snohomish County Auditor received the petition. The signatures on the petition requesting a vote on Initiative #98-1130 were validated the same day, and the information was returned to the City of Monroe.
- 4.19 On Wednesday, May 13, 1998, the Monroe City Council, after hearing advice from the City Attorney, held a straw vote and determined Ordinance #1130 to be administrative and not legislative, therefore not subject to the referendum process. See Exhibit #12. As a result, Initiative #98-1130 was not placed on a ballot.
- 4.20 Report No.28 issued by the Municipal Research and Services Center of Washington, listed 7 exempt ordinances that were not subject to the referendum procedures, and that the initiative and referendum process would not apply to motions, orders, or resolutions made by city councils. See Exhibit #13. In addition, the report went on to state the following:

**“...the courts in Washington have recognized other limitations on the use of the powers of initiative and referendum. Basically, the courts have recognized two tests to determine if an ordinance is beyond the scope of direct legislation by the people either through the exercise of the initiative power or**

**the referendum power. The first test is whether the underlying action is legislative or administrative in nature. If the action is administrative then it is not subject to the power of initiative or referendum power.”**

**“The second test is whether the power is one which has been granted by the legislature to the corporate authority of the city (that is the city council) or whether it is a power that has been granted to the corporate entity (the electorate) as a whole.”**

4.21 Mayor Holman said that he was not aware that administrative ordinances were not necessarily subject to the referendum process until after March 18, 1998, when he directed the letter to be written to residents of Monroe. The Monroe City Council did not determine that the ordinance, Monroe City Ordinance #1130, was administrative and not subject to the referendum process until May 13, 1998.

4.22 Bill Verwolf stated the following about the issue of him not believing the referendum effort would result in the issue being placed on the ballot.

**“Well, as I had informed the council back in November when we were dealing with the question of referendum and initiative, in particular with this case, my feeling was that if this petition were circulated and got sufficient signatures the Council had three choices of how to deal with it. One is to reconsider their ordinance and go through a public process to see what was wrong with it. Second is to determine whether or not this was in fact was an administrative ordinance or a legislative ordinance, in which case it would not be subject to the referendum process. And it was my opinion, still is, that this was an administrative ordinance. And then, number three would have been the option of putting it on the ballot. So I figured the logical response from the council would be either one or two.”** (Bill Verwolf Interview Under Oath, pages 4-5-See Exhibit #14)

4.23 When asked why the March 19, 1998, letter did not inform the citizens of Monroe that the ordinance was administrative and not subject to the referendum process when it was mailed, and that it would have clarified the issue Bill Verwolf stated:

**“It would have. At the time that determination had not been made by council and I don’t make that determination so I couldn’t put that in there. You asked me if I thought it was going to be on the ballot, not if the council thought it was going to be on the ballot. So, that wasn’t done, and in retrospect I probably would have written this message a little different if I were writing it today.”** (Bill Verwolf Interview Under Oath, page 6-See Exhibit #14)

- 4.24 Mr. Asher said that he and City Administrator Bill Verwolf discussed the letter and the petition on the morning of Thursday, March 19<sup>th</sup>. During this conversation, Mr. Asher became aware that ordinance number 1130 might be administrative in nature and not subject to the referendum process. However, he did not know the law on this matter and he did not think about including that information in the letter.

RESPECTFULLY SUBMITTED this \_\_\_\_ day of April, 2000.

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Kurt Young  
Senior Political Finance Specialist

List of Exhibits

- Exhibit 1.** Complaint filed by Meredith Mechling on March 20, 1998, and a faxed copy of letter dated April 9, 1998, from Marc Mechling.
- Exhibit 2.** Copy of Monroe City Ordinance #1130, adopted by the City Council and approved by the Mayor on March 11, 1998.
- Exhibit 3.** Public Disclosure Commission Declaratory Ruling No. 3.
- Exhibit 4.** Public Disclosure Commission Declaratory Ruling No. 6.
- Exhibit 5.** Public Disclosure Commission Declaratory Ruling No. 14.
- Exhibit 6.** Copy of Monroe City Ordinance #1118, passed and approved by the Mayor and City Council on November 19, 1997.
- Exhibit 7.** Copy of petition supporting Referendum No. 98-1130, and additional information distributed by the individuals supporting the signature gathering effort.
- Exhibit 8.** Copy of the letter of response to a PDC request for information, dated August 10, 1998, from Bill Verwolf, City Administrator, City of Monroe.
- Exhibit 9.** Copy of letter entitled "An Important Message to the Citizens of Monroe from Mayor Bob R. Holman and Councilmember Ken Berger."
- Exhibit 10.** Copy of the Advertisement, paid for by the City of Monroe, which appeared in the Wednesday, March 25, 1998 edition of the Monroe Monitor.
- Exhibit 11.** Copy of the letter of response to a PDC request for information, dated April 1, 1998, from Bill Verwolf, City Administrator, City of Monroe.
- Exhibit 12.** Copy of a portion of the minutes from the Monroe City Council meeting held on May 13, 1998. The minutes provided address the council's decision regarding Referendum No. 98-1130.

**Exhibit 13.** Portion of Report No. 28, dated February, 1994, from the Municipal Research and Services Center of Washington, addressing the Initiative and Referendum Powers of Cities in the State of Washington.

**Exhibit 14.** Portions of the transcript of interviews under oath included as part of this report of investigation.